UNITED
NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1996/NGO/37
23 March 1996

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 9 of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by Human Rights Advocates Inc., a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[19 March 1996]

Violations of the rights of migrant workers

1. For years, the Commission on Human Rights has voiced its concern over the urgent need to protect the rights of migrant workers around the world. In response to this, by its resolution 45/158 on 18 December 1990, the General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention). In order for it to enter into force, the Convention provides that 20 States must ratify it.

2. In resolutions 1994/17 of 25 February 1994, 1993/89 of 10 March 1993 and 1992/81 of 6 March 1992, the Commission on Human Rights recognized that in spite of the establishment of the Convention, further efforts were needed to protect the rights of migrant workers and their families. The Commission urged Member States to guarantee protection of these rights by ratifying the Convention. Despite their urgings, only five States, Chile, Morocco, Mexico,

Seychelles and the Philippines, have signed the Convention and only two States, Morocco and Seychelles have ratified it. 1/ Thus, as of today, the Convention is completely ineffective.

3. As was revealed during the drafting debates, many delegates voiced their concerns and raised their objections to the Convention. 2/ For these reasons, it appears unlikely that the Migrant Workers' Convention will be further ratified.

4. The International Labour Organization (ILO) estimates that the number of migrant workers worldwide is around 25 million. 3/ While ratification of the Migrant Workers' Convention remains stagnant, violations of the rights of migrant workers continue to be perpetrated on a massive scale. Of great concern is the resurgence of "sweatshop" conditions in the garment industry. In the United States, sweatshops are defined as employers that violate more than one federal or State labour law regarding overtime, minimum wage, occupational safety and health, child labour, workers' compensation, industry registration or industrial homework. 4/ Migrant workers, both legal and illegal, and particularly women, are extremely vulnerable to becoming exploited labour working under such "slave-like" conditions.

5. There are approximately 1 million garment workers in the United States. Most of them are Asian or Hispanic women who have recently immigrated to the United States. 5/ According to the United States General Accounting Office, two thirds of New York's 7,000 garment shops are reported to be sweatshops, and labour officials estimate that one fifth of the apparel factories in Los Angeles are underground. 6/ Factory employers take advantage of the workers' legal status, naivety and cultural alienation in an attempt to win manufacturers' sewing contracts with the lowest bids. 7/

6. Workers are generally paid by the piece, earning as little as $1.00 per hour; well below the minimum wage of $4.25 per hour. 8/ Many workers claim that they are owed back wages from employers who have since closed their factories. It is common for sweatshops to close and later reopen under another name in order to avoid paying workers' wages. 9/ The Labor Department states that such operations are thriving in centres of the garment industry such as New York, Miami, El Paso and Los Angeles, and also in more rural areas such as parts of Pennsylvania and the South. 10/ The following are specific examples of abuses documented throughout 1995.

7. Brooklyn, New York: A 44-year-old immigrant from China works 12 hours a day, 7 days a week, earning less than $2.50 an hour sewing garments. The factory operates inside a two-storey building with no windows and poor ventilation. 11/

8. Queens, New York: An industrial building containing three garment shops on different floors has fire exits that are sealed shut by metal gates with large padlocks. 12/

9. New York, New York: Investigators discover that out of 37 garment workers, only 18 had time cards. This is a tell-tale sign that workers are being paid off the books at below minimum wage. At another shop within the same building, an owner is cited for employing minors. 13/

10. Sunset Park, New York: In a dim and dusty warehouse, red and blue rags cover all four windows, completely shutting out any natural light. Rows of middle-aged Chinese women sit hunched over sewing machines, working seven days a week at approximately 65 cents per hour. Health conditions are poor due to lack of proper ventilation. 14/

11. Various Midwestern Sates: A sweep of several contract sewing shops by the Labor Department turned up many violations of federal minimum wage laws, as well as overtime laws. Violations were found in Chicago, Cincinnati, Cleveland, Indianapolis and South Bend, Indiana. 15/

12. Los Angeles, California: Eight suspects were charged with illegally transporting, harbouring and forcing 56 Thai immigrants into years of involuntary servitude as low-paid workers in a garment factory over a period of seven years. The eight charged were alleged to have extorted money from the Thai workers in exchange for safe passage to the United States. Upon arrival in the United States, the immigrants were placed in the factory and forced to work up to 17 hours a day at $1.60 per hour to pay for their transportation. Some workers who had eventually paid off their debt were still forced to stay. The eight accused were eventually reduced to seven and all seven pleaded guilty to violating Federal civil rights laws. 16/ Also in Los Angeles, United States Immigration and Department of Labour officials raided three garment factories and found 51 illegal immigrants from Mexico, El Salvador, Honduras, Thailand and the Lao People's Democratic Republic. The workers were forced to work long hours sewing clothes and were paid meagre wages based on their work product. 17/

13. Dallas, Texas: Department of Labor investigators discovered a sewing operation in the Dallas suburb of Garland. The investigation revealed that for the last two years, none of the workers had been paid overtime despite working 10 hours a day, 6 days a week. 18/

14. Central America and the Caribbean: In San Salvador, El Salvador, the trade zone is a huge complex of sweatshops surrounded by cinder block walls, barbed wire and armed guards. Throughout Central America and the Caribbean, the women who work in these factories typically earn less than one dollar an hour sewing clothes destined for the United States. For most of them, the money they earn is not enough to supply them with adequate food and shelter for themselves and their children. Infants and toddlers are commonly fed rice water or coffee instead of milk which is too expensive. 19/

15. Thailand: Although the Constitution generally prohibits forced or compulsory labour, it has been reported that there are a number of sweatshops in the informal sector that physically restrain workers from leaving the premises. Authorities cannot estimate how many of these factories exist, but the increase in illegal immigrants, particularly from Myanmar, increase the opportunity for such abuse. For the past several years, Thailand has been cited by the ILO for violating prohibitions against forced child labour, especially child prostitution. 20/

16. Guangzhou, China: Guangzhou is the provincial capital of Guangdong, China. In 1990, Guangzhou estimated a total of 639,000 migrant workers. Many of these migrants are females from rural China who come to work in the many

sweatshops, producing goods for export. As always, among all of the work opportunities that are available to migrant workers, the positions in manufacturing tend to pay the least. 21/

17. Shenzhen, China: In Shenzhen, approximately 300,000 Chinese migrant workers, almost all of them women in their late teens and early twenties, work in hundreds of factories making and packaging toys to be exported to America and Europe. Factories in Shenzhen also produce products as diverse as clothes and computer keyboards. The average wage in these factories is $75-$85 per month. Most of the women live in fenced-in concrete dormitories sleeping five to eight women per room. In 1993, a faulty fuse in one of the toy factories caused a fire which killed 87 workers. The workers had been locked in the factory because the owners feared the workers might steal some of the toys. 22/

18. Beijing, China: In Zhejiang Village, a migrant community on the outskirts of Beijing, approximately 100,000 migrant workers have settled to work in garment sweatshops, food stalls, clinics and nursery schools. Residents of Beijing blame much of the city's problems on these migrant workers and discriminatory attitudes towards them run high. 23/

19. The Migrant Workers' Convention provides for the protection of a broad range of rights related specifically to the unique status of migrant workers. However, because of its breadth, States have indicated that they fear the consequences of ratifying this unique Convention. It has also been suggested that the Migrant Workers' Convention is repetitious and reformulates rights already granted in other United Nations instruments. 24/ Because of the continuing violations of the rights of migrant workers around the world, the Commission must take action to protect migrant workers' rights through avenues that are presently available. These include:

20. The International Labour Organization: In the Convention concerning Migration for Employment (No. 97), the Convention concerning Equality of Treatment (Social Security) (No. 118) and the Convention concerning Migrant Workers (Supplementary Provisions) (No. 143), the ILO has recognized and provided for the special protections required by migrant worker communities. Regular and systematic monitoring of States parties' compliance with ILO treaties makes the ILO one of the most effective international mechanisms for the protection of human rights. The ILO may also accept complaints of treaty violations by government bodies, trade unions or employers' associations, or delegates to the International Labour Conference. 25/

21. The United Nations Educational, Scientific and Cultural Organization: UNESCO has adopted many recommendations, conventions, and declarations concerning human rights in the areas of education, science and culture. UNESCO had devoted a great part of its programme concerning migrants to furthering the educational and cultural rights of migrant workers and their families. 26/ In order to monitor States' compliance with UNESCO instruments, UNESCO reviews periodic reports by States parties, and may also consider communications by individuals and NGOs alleging human rights violations within their area of competence. 27/

22. The Human Rights Committee: Many of the specific rights enumerated in the Migrant Workers' Convention are also included in the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee is the treaty body created to monitor States' compliance with the ICCPR through periodic reports submitted by States parties. They may also consider communications by individuals living and working in a foreign country, alleging violations of their basic human rights. For example, in 1988, a Spanish seaman submitted a communication alleging that he, along with 222 other foreign sailors, was wrongfully terminated by a private Netherlands shipping company. 28/ The Committee also considered a communication by a French national living and working in Madagascar who alleged that he was arbitrarily arrested and detained. 29/

23. Committee on Economic, Social and Cultural Rights: As the counterpart to the ICCPR, the International Covenant on Economic, Social and Cultural Rights also offers some protection to the rights of migrant workers. However, the Convention allows for "developing" countries to determine the extent to which they wish to guarantee economic rights to non-nationals. The Committee on Economic, Social and Cultural Rights monitors compliance with the Covenant by examining reports submitted to it by States parties on the measures they have adopted to further the protections offered by the Convention.

24. Committee on the Elimination of Racial Discrimination: The International Convention on the Elimination of All Forms of Racial Discrimination is premised on the principle of non-discrimination in terms of rights and restrictions on the basis of race. Accordingly, this Convention is a valuable avenue through which migrant workers may defend their rights. CERD supervises compliance with the Convention by reviewing periodic reports submitted by States parties, as well as considering communications from individuals who claim that their rights covered by the Convention have been violated. In relation to migrant workers, the Committee has considered a communication written by a Turkish national residing in the Netherlands who alleged that her employer made discriminatory statements towards her in his application to a Dutch court to terminate her employment contract. 30/

25. In the light of the tremendous need for international protection of the rights of migrant workers, and considering the ineffective status of the Migrant Workers Convention, Human Rights Advocates asks that the Commission request that the Secretary-General gather information regarding violations of the rights of migrant workers and members of their families from the various United Nations bodies discussed above and present a report of his findings to the Commission at its fifty-third session. Additionally, Human Rights Advocates asks that the Commission request the Secretary-General to obtain information on the measures these groups have taken to ensure that migrant workers' rights are being protected. We ask that the Commission take these steps as part of an effort to coordinate the activities of the various United Nations bodies in order to promulgate better protection for migrant workers' rights.

Notes

1/ Multilateral Treaties Deposited With the Secretary-General, Status as at 31 December 1994, ST/LEG/SER.E/13 at 204.

2/ Delegates were concerned that the Convention encourages illegal migration, and that it gives privileged status to migrant workers over nationals. Furthermore, delegates argued that the Convention protects the rights of undocumented workers beyond what some States envisioned, and objected to the broad definitions set forth in the Convention. Report of the open-ended working group on the elaboration of an international convention on the protection of the rights of all migrant workers and their families [hereinafter Working Group Report], United Nations document A/C.3/40/1 (1985).

3/ "Nations urged to legalize migrant labor", United Press International, 10 September 1995.

4/ Morton Allen Associates, "Sweatshop working conditions in the U.S. garment industry", Industrial Health & Hazards Update, June 1995.

5/ Dick Meister, "Government wants to end sweatshop era", San Francisco Examiner, 21 February 1995, at A17.

6/ Christina Nifong, "U.S. garment industry faces crossroads", Christian Science Monitor, 13 November 1995, at 9.

7/ Bob Herbert, "How hunger helps keep down the prices of clothes", Rocky Mountain News, 17 October 1995, at 28A.

8/ Mark Smith, "Texas garment industry suffers: overseas labor, illegal wages kill another factory", Houston Chronicle, 6 December 1995, at 1; Meister, supra note 5.

9/ Monte Williams, "Labor Department hears tales of sweatshops, restaurants, and fear", New York Times, 6 August 1995, at sect. 13, p. 7, col. 1.

10/ Nifong, Supra note 6.

11/ Alan Finder, "Hard labor - a special report: Despite tough laws, sweatshops flourish", New York Times, 6 February 1995, sect. A, p. 1, col. 2.

12/ Ibid.

13/ Ibid.

14/ Jane H. Lii, "65 cents an hour - a special report: Week in a sweatshop reveals grim conspiracy of the poor". New York Times, 12 March 1995, at sect. 1, p. 1, col. 1

15/ "Sweep of midwest sweatshops nets minimum wage violations", Daily Labor Report, 19 April 1995.

16/ "Feds charge eight Thais in alleged sweatshop ring", Reuters Limited, 3 August 1995: "Thai workers in U.S. tell of lives as slaves", Reuters Limited 4 August 1995: "7 Thais enter guilty pleas for detention in sweatshop", New York Times, 11 February 1996, at sect. 1, p. 39, col. 1.

17/ "Garment factory owners indicted", Los Angeles Times, 9 September 1995, at A20.

18/ "Labor Secretary issues subpoena to identify retailers, others in investigation that reveals exploitation at Dallas sweatshop", U.S. Newswire, 7 November 1995.

19/ Letta Tayler, "Worker abuse allegations strain U.S.-Salvador relations", The Fresno Bee, 31 December 1995, at C1; Bob Herbert, "How hunger helps keep down the price of clothes", Rocky Mountain News, 17 October 1995, at 28A.

20/ Thailand Human Rights Practices, 1994, United States Department of State.

21/ "When you think China and consumers, think of Guangdong", Market Asia Pacific, 1 March 1995, vol. 4, No. 3.

22/ Steven Mufson, "Santa finds a bargain in China: Low-paid workers make toys by the millions", The Washington Post, 24 December 1995, at A01.

23/ Maggie Farley, "China tries to control nations migrant workers", Los Angeles Times, 26 December 1995, at A1.

24/ Working Group Report, supra note 2.

25/ Lee Swepston, "Human rights complaint procedures of the International Labour Organization", in Guide to International Human Rights Practice, second edition, 1992

26/ "Migrant workers", General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, sixty-sixth session, 1980.

27/ Stephen P. Marks, "The Complaint Procedure of the United Nations Educational, Scientific and Cultural Organization", in Guide to International Human Rights Practice, second edition, 1992.

28/ F.G.G v. The Netherlands, Communication No. 209/1986, in Selected Decisions of the Human Rights Committee Under the Optional Protocol, vol. 2, United Nations document CCPR/C/OP/2.

29/ Mannel v. Madagascar, Communication No. 155/1983, ibid.

30/ A/43/18.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1996/NGO/38
26 March 1996

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 17 of the provisional agenda

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 March 1996]

1. The experience of the United Nations Independent Expert in Guatemala has been extremely positive and has had an important impact on the troubling human rights situation there. The need for public reporting by the Independent Expert persists, indeed is crucial to prevent deterioration in Guatemala's troubling human rights situation.

2. The United Nations Commission on Human Rights has been examining the human rights situation in Guatemala since 1979. Between 1982 and 1986, the Commission had assigned Guatemala a special rapporteur, placing it in the category of the world's most serious human rights offenders. After a civilian Government was established in 1986, the Commission assigned Guatemala to the category of advisory services, to offer advice in improving the human rights situation. As serious human rights violations persisted even under civilian Governments, the Commission in 1990 approved the appointment of an "independent expert" for Guatemala - who would continue to provide advisory services but also prepare a detailed public report on the human rights situation.

3. The desire to avoid the stigmatization of being assigned a special rapporteur has motivated successive Guatemalan Governments to strive to demonstrate compliance with the recommendations of the Independent Expert. Shortly after assuming the presidency in June 1993, Ramiro de León Carpio drew up a human rights agenda based almost entirely on the recommendations of the Independent Expert. In the initial months of his administration, de León Carpio adopted several important reforms in keeping with those recommendations; unfortunately, many of these efforts were later abandoned under military pressure. None the less, the current Government's return to key recommendations put forth by both the Expert Christian Tomuschat and his successor, Mónica Pinto - such as the need to reform the police forces - illustrate the extent to which the Commission, through the public reports of the Independent Expert, continues to define the agenda for human rights in Guatemala.

4. Even while it moves to demonstrate compliance with the Experts' recommendations, Guatemala's new Government of Alvaro Arzu Irigoyen, who took office on 14 January, has announced its desire to end the mandate of the Independent Expert and accept in its place advisory services without a public report. Guatemala's acting foreign minister, Gabriel Aguilera, was quoted justifying a request for an end to the public reports of the Independent Expert on the grounds that a genuine democracy had taken root in Guatemala and that the impending resolution of Guatemala's three-decade armed conflict would obviate the need for monitoring by the Commission. ("Canciller en funciones cuestiona política de DH", Prensa Libre, 27 February 1996.)

5. To terminate the Independent Expert's mandate would be a grave mistake. While the new Government has made public statements regarding its intentions to respect human rights, and has taken some initial steps in this direction, it is far too soon to evaluate the impact of these intentions and first steps.

6. Moreover, the experience of the past 10 years in Guatemala, in which three freely elected civilian Governments have failed to bring an end to a pattern of gross violations of human rights committed by the army and its surrogates, makes clear that the arrival of a fourth elected Government does not in and of itself guarantee an end to serious human rights violations. Moreover, each civilian who has reached the presidency has promised to negotiate an end to Guatemala's armed conflict, and none has yet managed to attain that goal. In the meantime, serious human rights violations have continued in Guatemala, including extrajudicial executions, disappearances and torture. On 5 October 1995, Guatemalan soldiers massacred 11 refugees who had returned from Mexico to a village in the department of Alta Verapaz. On 23 June 1995, human rights monitor and Presbyterian pastor Manuel Saquic Vásquez disappeared in Chimaltenango. The pastor's body was found later, partially decapitated and with 33 stab wounds. Since the slaying, the second of a human rights defender in that area in the last two years, several human rights monitors, witnesses and relatives of victims of human rights abuses have suffered death threats from the self-styled death squad "Avenging Jaguar" (Jaguar Justiciero).

7. In several notorious cases of extrajudicial executions of human rights monitors, judges have issued warrants for the arrest of military commissioners and civil patrol members. The police have failed to act on these warrants, in

some cases over the course of several years. Yet while the Government has consistently failed to bring to justice those responsible for human rights violations, a sort of underground system has regularly meted out retaliation against those who pursued justice through the courts. Not only have witnesses, plaintiffs and relatives of victims of human rights violations been targeted for violence and intimidation, but prosecutors, judges, and police who attempted to bring violators to justice have also suffered reprisals. In most of these cases, the evidence strongly suggests that the security forces or their agents were behind the reprisals.

8. While halting efforts have been made by each of the last three civilian administrations to comply with the recommendations of the Independent Experts named by the Commission on Human Rights, these goals remain largely unfulfilled. This makes continued public supervision by the Independent Expert indispensable.

9. One of the Experts' key recommendations - an end to press-gang-style forced military recruitment - has been largely fulfilled, thanks to the insistence of the Independent Experts and the United Nations human rights verification mission in Guatemala (MINUGUA). Another recommendation, the abolition of the institution of military commissioners, was adopted by the Government in September 1995. Military commissioners are civilians employed by the army to recruit soldiers, provide intelligence to the army, and carry out rural political police operations. Unfortunately, ex-military commissioners, along with civil patrollers, continue to commit gross violations of human rights with impunity. The Government has yet to take adequate steps to disarm the individuals and to prosecute and punish those responsible for human rights violations.

10. Other recommendations still unfulfilled or only partially fulfilled include the following:

(a) Abolition of the army-organized civil patrols, which have been responsible for a consistent pattern of violations of human rights. In her January 1994 report, Independent Expert Mónica Pinto recommended that while the means for the dissolution of the patrols were still being adopted, the Government should disarm those patrols which had participated in grave violations of human rights, such as those in San Pedro Jocopilas, Joyabaj and Colotenango. None the less, the military, which arms, trains, and supervises the civil patrols, has refused to take weapons away from those units which have committed abuses, and the formal dissolution of the patrols remains a distant promise of the much-delayed peace process;

(b) Demilitarization of the Presidential General Staff (Estado Mayor Presidencial) and establishment of a civilian intelligence service compatible with democratic government. This recommendation reflects the history of extrajudicial executions, disappearances, and torture carried out by the army's military intelligence service (G-2) and the Archivo section of the Presidential General Staff. Although President de León Carpio announced the dissolution of the Archivo in 1993, that unit maintained a semi-clandestine existence, albeit with a reduced operational staff. Its extensive files on individuals, which are believed to have been used to compose hit lists, have not been turned over to civilian authorities, as recommended by both Tomuschat

and Pinto. The proposal put forward by the de León Carpio Government for a new intelligence service guaranteed a continuing powerful role for the military in domestic intelligence matters, contrary to the Experts' clear recommendations;

(c) Police reform in order to insulate civilian law enforcement from military pressure. This has been stressed as an urgent priority by both Tomuschat and Pinto and consequently became an early priority of the de León Carpio Government but was later abandoned under military pressure. The Arzu Government appears interested in renewing reform efforts, a process which will benefit from continued scrutiny and public evaluation by the Commission on Human Rights;

(d) Abolition of impunity in cases of grave violations of human rights. Impunity remains entrenched, despite the recommendations of the Independent Expert and MINUGUA;

(e) The establishment of civilian court jurisdiction over crimes in which either the victim or the perpetrator is a civilian. This important measure recommended by Tomuschat was not incorporated into Guatemala's new criminal procedures code, which instead allowed for civilian participation in military court trials in cases of common crime committed by army members. None the less, the civilian courts have established an important precedent in the case of the massacre of refugees in Alta Verapaz, which is now in the hands of a civilian court.

11. Human Rights Watch believes that it is of paramount importance that public reports by the Independent Expert continue to be published. We urge the United Nations Commission on Human Rights to renew the mandate of the Independent Expert without modifications.

UN

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1996/NGO/39
27 March 1996

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 20 of the provisional agenda

RIGHTS OF THE CHILD

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 March 1996]

Orphaned children

1. Thousands of children are allowed to die every year from medical neglect in China's State-run orphanages, with the tacit approval of senior political leaders. The Chinese Government's official statistics on deaths in child-welfare institutes run by the Ministry of Civil Affairs indicate that conditions in China's orphanages are worse than those previously documented anywhere else in the world, leaving most institutionalized children little chance of surviving beyond childhood. The Government does little or nothing to prevent the deaths of these children, many of whom are abandoned children, born in violation of the country's family-planning regulations; some are physically or mentally handicapped. Indeed, there is evidence that, in some cases, food and medical treatment have been deliberately withheld.

2. Documentation from one of China's largest and best-known orphanages, the Shanghai Children's Welfare Institute, reveals grave abuses of children. Medical records of hundreds of orphans who were sent to that Institute show that the majority of abandoned children admitted during the late 1980s and

early 1990s died within one year of admission. In 1989, most such deaths were routinely recorded as resulting from "congenital maldevelopment of the brain". In almost all cases, this diagnosis was made without any apparent medical justification and sometimes in the face of clear evidence that a child had suffered from no mental disability.

3. By 1992, after complaints from doctors and staff practising in the orphanage, these baseless diagnoses became far less common, replaced by "third-degree malnutrition" as the most commonly recorded cause of orphans' deaths. The medical records for many children, which record their weight and general health at the time of admission, clearly indicate that the process of starvation usually began only after their arrival at the orphanage and was left intentionally untreated by staff members who passively observed their gradual deterioration and death.

4. The starvation of unwanted orphans at the Shanghai orphanage reportedly took place after an informal process known internally as "summary resolution", during which child-care workers would select one or more children on a given ward for death by deprivation of food and medical care. When these children had been gravely weakened by malnutrition - often sedated to prevent them from struggling or escaping from their beds - medical staff would be invited to perform a formalized written "consultation", which implicitly endorsed the decision to eliminate a targeted orphan. In virtually all such cases, this "consultation" was followed by death within the following several days or weeks.

5. Documentary and eyewitness evidence from Shanghai indicates that the city's highest political leaders conspired in early 1992 to suppress an official investigation into evidence of these and other grave abuses at the Shanghai Institute. Officials concealed abuses from the Chinese and foreign public, ordering the city's press and broadcast media to suspend all negative coverage of the Institute and to take special care to prevent foreigners from learning of conditions at the orphanage.

6. Following this high-level intervention, orphanage staff members who had brought about the initial inquiry by seeking to publicize the abusive conditions were dismissed, transferred or forced into early retirement, while city officials who supported their complaints, including 14 members of the Shanghai Municipal People's Congress, were demoted for their involvement in the inquiry. Meanwhile, other orphanage employees responsible for abusing children retained their positions or were promoted to posts of even greater responsibility. The former director of the Shanghai orphanage was promoted to vice-director of the city's entire custodial welfare system, despite clear evidence that he was personally responsible for criminal offences against orphans that included rape, assault and other forms of abuse.

7. In addition to targeting some orphans for starvation, Shanghai institution staff physically abused children, including beatings, rape, excessive use of physical restraints and inhumane punishments like hanging children upside down with their heads submerged in water.

8. China's 1991 adoption law forbids the adoption of abandoned children by individuals younger than 35 and by those who already have a child.

9. Human Rights Watch calls on the Commission on Human Rights to urge the Chinese Government to:

(a) Open all institutions caring for abandoned and orphaned children to public scrutiny by domestic and foreign observers;

(b) Order the Ministry of Civil Affairs to publish immediately comprehensive statistics on abandoned children, giving detailed figures on the number of abandoned infants and children discovered in each Chinese province in recent years, as well as the number of such children offered for legal adoption, fostered with private families, and placed in institutional care;

(c) Prosecute those responsible for perpetrating or concealing abuses against orphans in Shanghai;

(d) Order the Ministry of Civil Affairs to promulgate strict rules prohibiting the abuse of children in welfare institutions, such as corporal punishment, tying of children's limbs, medically unjustified use of drugs to control children's behaviour and all forms of paid or unpaid child labour;

(e) Amend the 1991 adoption law to eliminate obstacles to the domestic adoption of abandoned children.

Child soldiers

10. Thousands of children as young as eight and nine years old are used as soldiers in armed conflicts around the world. Many of these children are directly involved in fighting, often equipped with fully automatic assault rifles. Thousands have been killed - deprived of the most basic right, the right to life - and thousands more seriously wounded. Children themselves have killed and wounded civilians as well as opposing fighters. Many have taken part in terrible atrocities. These children bear appalling physical and psychological injuries and pose dangers to themselves and to others.

11. Human Rights Watch has conducted field investigations and issued reports on the use of children as soldiers in Liberia (1994) and in the Sudan (1995). In earlier years we have reported on child soldiers in internal conflicts in Angola, Myanmar, El Salvador, Ethiopia, Mozambique and Peru. After interviewing scores of child soldiers, we have concluded that no child under 18 should take part in armed conflict.

12. Human Rights Watch urges the Commission on Human Rights to convene a third session of the Working Group to Draft an Optional Protocol to the United Nations Convention on the Rights of the Child on Participation of Children in Armed Conflict that would raise the minimum age at which individuals can take part in armed conflict. We believe that no child under the age of 18 should take part directly or indirectly in hostilities, whether international or internal. We oppose both the compulsory recruitment of under-18-year-olds and the voluntary recruitment of children under 18. We oppose the recruitment of under-18s by non-governmental armed groups as well.